

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

ROBERT W. VALENTI,)	Civil Action No.: 4:07-cv-3038-TLW-TER
)	
Plaintiff,)	
)	
-vs-)	
)	REPORT AND RECOMMENDATION
)	
MIKE GREEN, STEPHEN J. ELLS,)	
DUNES INVESTMENTS, DUNES)	
MORTGAGE, DARIN EPPS, GREG)	
T. WARREN, KELLY W. WARREN,)	
DANIEL A. STICKLER, and NEEVES)	
APPRAISAL COMPANY;)	
)	
Defendants.)	
_____)	

This matter is before the Court on Plaintiff's Motion for Order of Dismissal (Document # 113) pursuant to Rule 41(a)(2), Fed.R.Civ.P. Because two Defendants, Stephen J. Ellis, and Daniel A. Stickler, are proceeding pro se, all pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d), DSC. Because this is a dispositive Motion, this Report and Recommendation is entered for review by the district judge.

In an Affidavit attached to the Motion, counsel for Plaintiff avers that Plaintiff entered into an agreement by which Ells agreed to make certain payments to Plaintiff in compromise of Plaintiff's claims. Cleveland Aff. ¶ 2. Ells performed under the agreement and, thus, Plaintiff seeks to dismiss his claims against Ells with prejudice. Id.

Plaintiff also entered into agreements with Defendants Greg T. Warren, Kelly W. Warren, Dunes Investments, Dunes Mortgage and Darin Epps pursuant to which these Defendants agreed to

make certain payments to Plaintiff in compromise of Plaintiff's claims. Id. ¶¶ 3-4. These Defendants have failed to perform under the agreement. Id. Accordingly, Plaintiff seeks to dismiss his claims against these Defendants without prejudice. Id.

Although not set forth in the Motion, Cleveland avers in his Affidavit that Plaintiff wishes to dismiss his claims against the remaining Defendants without prejudice. Id. ¶ 5.

Rule 41(a)(1)(A), Fed.R.Civ.P., provides that voluntary dismissal of an action is proper without a court order "by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment" or a stipulation of dismissal signed by all parties who have appeared. Rule 41(a)(2), Fed.R.Civ.P., provides that a court order is otherwise required for a voluntary dismissal. None of the Defendants has filed an opposition to this Motion. Dismissal of this action pursuant to Rule 41(a)(2), Fed.R.Civ.P., is proper. Accordingly, it is recommended that Plaintiff's Motion for Order of Dismissal (Document # 113) be granted, that the claims against Defendant Stephen J. Ells be dismissed with prejudice and the remaining claims against the other named Defendants be dismissed without prejudice.

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

May 13, 2010
Florence, South Carolina

The parties are directed to the important notice on the following page.